IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(1) Civil Misc.Writ Petition No. 1641 (M/S) of 2001
(Old No.42175 of 1999)

Food Corporation of India, through
Assistant Manager, Food Corporation
of India, Haldwani,District-Nainital
..... Petitioner

Versus

Virendra Singh Pargai
and two others. ..... Respondents

AND

(2) Civil Misc.Writ Petition No. 1642 (M/S) of 2001
(Old No.42176 of 1999)

Food Corporation of India, through
Assistant Manager, Food Corporation
of India , Haldwani,District-Nainital
..... Petitioner

Versus

Naveen Chandra Ruwali
and two others. ..... Respondents

.....

Hon'ble P.C.Verma,J.

Both the aforementioned writ petitions involve common question of law, hence they are taken together and disposed of by a common judgment.

These writ petitions have been filed by the petitioner-Food Corporation of India challenging the award made by the Labour Court in Adjudication Case No.69 of 1997 and Adjudication Case No.68 of 1997 respectively, where by the Labour Court has held the discontinuance of the respondent No.1 in both these writ petitions, holding them to be the employees of the Food Corporation of India. The petitioner has challenged the award on the ground that the respondents/workmen do not fall within the meaning of

'workman' as defined under U.P. Industrial Disputes Act and the Corporation was not the employer of the respondents/workmen. The respondents/workmen were the employees under the United Provinces Rakshak Dal Act, 1948. They were deputed for security purposes on contract basis between the Regional Office of the Food Corporation of India and the Inspector General of Provinces Rakshak Dal. Even after the discontinuance from the security duty, the respondents/workmen are in service of their original employer. They continued to be the employees under their original employer.

Refuting the contentions of the learned counsel for the petitioner, the learned counsel for the respondents/workmen Sri Gopal Narain on the other hand contended that the respondent No.1 in both these writ petitions are workmen within the meaning of definition of the workman defined under the U.P.Industrial Disputes Act. They were being paid salary by the Food Corporation of India, therefore they were employees of Food Corporation of India as they working there. He relied on the following judgments of Apex Court in support of his contentions:-

(1) M/s. Basti Sugar Mills Ltd. versus Ram Ujagar and others, reported in AIR 1964 Supreme Court, 355,

(2) M/s. Y. L. Agarwalla and others versus Commissioner of Income-Tax Central Calcutta, reported in AIR 1978 Supreme Court, 1412,

(3) M/s. Bharat Heavy Electrical Ltd. versus State of U.P. and others, reported in 2003 AIR SCW, 3469.

U.P.Induistrial Disputes Act defines 'workman' under Section 2 (z) as under:-

'workman' means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Army Act, 1950 or the Air Force Act, 1950, or the Navy (Discipline) Act, 1934; or

(ii) **who is employed in the police service** or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

Sub clause (ii) is an exception and shall not be included within the definition of 'workman'.

Now it is to be examined as to whether the respondents were in the police service or not. The United Provinces Rakshak Dal Act, 1948 was enacted in 1948 and came into force atonce. It received the assent of the Governor on 4th December, 1948. It extends to whole of U.P.

Sub section (b) of Section 2 of the this Act defines the member of Rakshak Dal as under:-

"2.(b) Member of the Rakshak Dal means a person who is enrolled as such and includes an officer appointed under the provisions of this Act."

Section 7 of the United Provinces Rakshak Dal Act provides powers, protection and control, which is reproduced as under:-

"7.**Powers, protection and control etc.-**(1) For the enforcement of the provision of this Act or any rule or regulation made thereunder every membver of the Rakshak Dal, shall, when on duty or called for duty, be deemed to be a police officer, and subject to any terms, conditions and restrictions as may be prescribed, to have and be subject to, in so far as it is not inconsistent with this Act, all the powers, privileges, liabilities and protections, as a police officer duly appointed has or is subject to by virtue of the Police Act, 1861 (save Section 29 thereof), or of any other law for the time being in force.

(2) No prosecution shall be instituted against a member of the Rakshak Dal in respect of anything done or purported to be done by him in discharge of his functions as such member except with the previous sanction of the authority prescribed in that behalf.

(3) The superintendence of the Force in an area shall vest in such officer or officers as may be appointed by the State Government."

Section 8 of this Act provides the period of service and discharge which reads as under:-

"8. **Period of service and discharge.**- Every member of the Rakshak Dal shall be required to serve the State Government for such period as may be prescribed. He shall thereafter be called up for duty of any time during a further period as may be prescribed. After the expiry of such further period the member shall be deemed to have been discharged from the Rakshak Dal."

Relevant Section for the purpose is Section 17 of the United Provinces Rakshak Dal Act, which provides permission by employer to join duty. In fact the provisions

of this Section are attracted here in the present case, where the Food Corporation of India which permitted the respondents/workmen to join duty. Section 17 of this Act reads as under:-

> **"17.Permission by Employer to join duty.**(1)- Except as may be prescribed, every employer, his agent or manager shall permit a member of the Rakshak Dal, who is for the time being employed by or under him, to join this duty as such and notwithstanding anything in any law or agreement between him and such member in force, the period between the date of the member joining his duty and his release therefrom shall subject to such conditions and restrictions, as may be prescribed, be deemed to be period spent in such employment.
>
> (2) No employer, his agent or manager, shall dismiss, remove or suspend any employee, or take any other action which may prejudice such employee, by reason of his being a member of the Rakshak Dal.
>
> (3) Whoever contravenes the provisions of the Sub-section (1) or (2) shall be punished with fine which may extend to two hundred rupees."

A conjoint reading of Sections 7, 8 & 17 of the United Provinces Rakshak Dal Act, 1948 clearly shows that the respondent No.1 in both these writ petitions even if engaged for the security purposes by the Food Corporation of India, who is alleged to be employer according to submissions of learned counsel Sri Gopal Narain noted above, he could be discharged and the period spent on duty shall be treated to be in employment. The discharge of the member of service has to be made according to provisions of Section 8. The respondent No.1, in both the writ petitions, after their discontinuance from duty in the office of Food Corporation of India, remains on the roll as their services are to be discharged according to provisions of Section 8. There is no order on record to show that their

services have been discharged according to provisions of Sec.8. By virtue of Section 7 of the Act he was in police service, therefore he cannot be held to be a workman by virtue exceptions provided under Clause (ii) of sub sec. (z) of Section 2 of the U.P.Industrial Disputes Act, 1947. The aforesaid question was not considered by the Labour Court. The finding recorded by the Labour Court contrary to this cannot be sustained in the eye of law. Therefore, the impugned award is liable to be set aside. The definition of employer as defined under the U.P.Industrial Disputes Act is not of any help to the respondent No.1 in both these writ petitions, as they are not workmen. The judgment relied by Sri Gopal Narian, learned counsel for the respondent No.1 are not on the point in issue. Therefore, they are not attracted on the issue, which I have decided.

Accordingly, both the writ petitions succeed. A writ of certiorari is issued. The award dated 28.07.1998, in both the writ petitions, is set aside. No order as to costs.

(P.C.Verma, J.)

29.8.2003

P.Singh